

IN AND BEFORE THE OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE AND SUPERVISION
STATE OF OKLAHOMA

FILED

STATE OF OKLAHOMA, ex rel.,
OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE AND
SUPERVISION,

Plaintiff,

-vs-

JOHN C. FUCCI, M.D.,
Medical License No. 19139,

Defendant.

FEB 05 1998

OKLAHOMA STATE BOARD OF
MEDICAL LICENSURE & SUPERVISION

Case No. 97-09-1931

VOLUNTARY SUBMISSION TO JURISDICTION
AND ORDER OF PROBATION

THIS CAUSE came on for hearing before the Oklahoma State Board of Medical Licensure and Supervision, (hereinafter "OSBMLS"), en banc on the 23rd day of January, 1998 at the offices of the OSBMLS, 5104 North Francis, Suite C, Oklahoma City, Oklahoma, pursuant to notice given as required by law and the rules of the Board.

The plaintiff appeared by and through its attorney, Gregory J. Ryan; the defendant appeared in person and through his attorney, Mack K. Martin.

The OSBMLS en banc proceeded and heard testimony, heard arguments of counsel, and after being fully advised in the premises, finds that there is clear and convincing evidence of the following findings of fact and conclusions of law:

FINDINGS OF FACT

1. That the Defendant John C. Fucci, M.D. holds Oklahoma Medical License No. 19139.
2. That a Complaint and Citation were issued in this case on the 16th day of October, 1997 charging the defendant with violations of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, 59 O.S. Supp. 1995, §509, Paragraphs 5, 9, 10, 12 and 16, as well as violations of the Oklahoma Administrative Code, O.A.C. Title 435:10-7-4, Subparagraphs (3), (5), (11), (26), (27) and (40).
3. That the OSBMLS has jurisdiction over the defendant and the subject matter herein and that notice has been given in all respects as required by law and the rules of the Board.
4. That on the 23rd day of January, 1998, this cause came on for hearing before the Board en banc.
5. That the Defendant John C. Fucci, M.D. voluntarily submitted himself to the jurisdiction of the Board for appropriate disciplinary action.
6. The Defendant John C. Fucci, M.D. is presently of sound mind and not under the influence of any type of mind-altering substance.
7. That the defendant recognized his right to appear before the Board en banc for full evidentiary hearing with all attendant due process rights and to have had the plaintiff prove the allegations in the Complaint by clear and convincing evidence or otherwise be acquitted of said charges.

8. That the defendant, by his own volition and decision, waived his right to said procedures and protections and pleaded guilty to the allegations in the Complaint.

9. That on or about the period from September 1996 through September 1997, the Defendant John C. Fucci, M.D. wrote false and fictitious prescriptions for controlled dangerous substances in the names of former patients for his own personal use and consumption.

10. On or about the period from September 1996 through September 1997, the Defendant John C. Fucci, M.D. suffered a substance abuse problem which impaired his ability to practice medicine and surgery with reasonable skill and safety to his patients.

11. That the defendant was admitted to Talbott-Marsh Recovery Campus, Atlanta, Georgia, on September 29, 1997 for in-patient treatment of chemical dependency and was released on January 10, 1998.

12. The defendant perpetuated significant potential harm to the public health, safety and welfare by continuing these acts and/or omissions alleged in the Complaint.

CONCLUSIONS OF LAW

13. The OSBMLS has jurisdiction and authority over the defendant and the subject matter herein pursuant to the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, 59 O.S. §480 et seq., and the Oklahoma Administrative Code, O.A.C. Title 435:1-1-1 et seq. (Rules of the OSBMLS).

14. The Defendant John C. Fucci, M.D., holding Oklahoma Medical

License No. 19139, was in violation of the Oklahoma Allopathic Medical and Surgical Licensure and Supervision Act, 59 O.S. §509, Paragraphs 5, 9, 10, 12 and 16, to wit:

5. Habitual intemperance or the habitual use of habit-forming drugs;
9. Dishonorable or immoral conduct which is likely to deceive or defraud the public;
10. The commission of any act which is a violation of the criminal laws of this state when such act is connected with the physician's practice of medicine;
12. The writing of false or fictitious prescriptions for any drugs or narcotics declared by the laws of this state to be controlled or narcotic drugs;
16. The inability to practice medicine with reasonable skill and safety to patients by reason of . . . excessive use of drugs, narcotics, chemicals or any other type of material . . .

and was also in violation of Oklahoma Administrative Code, O.A.C. Title 435:

10-7-4, Subparagraphs (3), (5), (11), (26), (27) and (40),

- (3) The habitual or excessive use of any drug which impairs the ability to practice medicine with reasonable skill and safety to the patient;
- (5) Purchasing or prescribing any regulated substance in Schedule I through V, as defined by the Uniform Controlled Dangerous Substances Act, for the physician's personal use;
- (11) Conduct likely to deceive, defraud or harm the public;

- (26) Prescribing, selling, administering, distributing, ordering, or giving any drug legally classified as a controlled substance or recognized as an addictive dangerous drug to a family member or to himself;
- (27) Violating any state or federal law or regulation relating to controlled substances;
- (40) The inability to practice medicine and surgery with reasonable skill and safety to patients by reason of . . . excessive use of drugs, narcotics, chemicals or any other type of material or as a result of any mental or physical condition.

15. The OSBMLS holds by clear and convincing evidence that the defendant has pleaded guilty to unprofessional conduct in violation of the statutory and administrative code provisions set forth above.

16. The OSBMLS has authority vested in it through 59 O.S. §509.1 to enforce the provisions of said Act and Code and to impose disciplinary action as necessary to protect the public health, safety and welfare.

ORDER

IT IS THEREFORE ORDERED by the Oklahoma State Board of Medical Licensure and Supervision as follows:

17. That the voluntary submission to jurisdiction entered by the defendant is hereby accepted by the Board en banc.

18. That Oklahoma Medical License No. 19139 of the Defendant John C. Fucci, M.D. should be and the same is hereby PROBATED as of the date of this order, February 5, 1998, for a period of five (5) years.

19. The OSBMLS orders that the TERMS and CONDITIONS of said

PROBATION will be as follows:

- a. During the period of probation, the defendant will not prescribe, administer, dispense or possess any drugs in Schedules II or III except to hospital in-patients, out-patients, or emergency room patients. The defendant may direct the administration of Schedule II or III drugs but not personally administer said drugs to such patients. No controlled dangerous substances will be prescribed, administered or dispensed to out-patients.
- b. During the period of probation, the defendant will keep duplicate, serial numbered prescriptions of all Schedule IV and V controlled dangerous substances, readily retrievable, in numerical order and will furnish copies to investigators or other authorized agents of the OSBMLS immediately upon request.
- c. Defendant will conduct his practice in compliance with the Oklahoma Allopathic Medical and Surgical Licensure & Supervision Act as interpreted by the OSBMLS. Any question of interpretation regarding said act shall be submitted in writing to the Board and no action based on the subject of the question will be taken by the defendant until clarification of interpretation is received by the defendant from the OSBMLS.
- d. During the period of probation, the defendant will furnish to each and every state in which he holds licensure or applies for licensure and hospitals, clinics or other institutions in which he holds or anticipates holding any form of staff privilege, a copy of the Board order stipulating the sanctions imposed by the OSBMLS.
- e. During the period of probation, the defendant will submit biological fluid specimens to include, but not be limited to, blood and urine for analysis upon request of the Board or its designee, and defendant

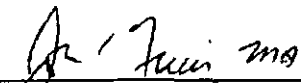
will pay for the analysis thereof.

- f. During the period of probation, the defendant will not prescribe, administer or dispense any medications for his own personal use.
- g. During the period of probation, the defendant will take no medication except that which is authorized by a physician treating him for a legitimate medical need. Defendant has the affirmative duty to inform any and every doctor treating him of the Board order immediately upon initiation of treatment.
- h. During the period of probation, the defendant will abide by the post-care contract from Talbott-Marsh Recovery Campus and the Oklahoma State Medical Association Physician Recovery Program (attached).
- i. Pursuant to Title 59 O.S. §506, the defendant shall promptly pay within thirty (30) days of receipt of invoice from the Board the cost of investigation, probation and monitoring of the case, unless the defendant affirmatively obtains a deferment of all or part of said fees upon presentation of evidence that is acceptable to the Secretary of the Board.
- j. During the period of probation, the defendant will keep current payment of all assessments by the Board for prosecution, investigation and monitoring of his case.
- k. Until such time as all indebtedness to the Board has been satisfied, the defendant will reaffirm said indebtedness in any and all bankruptcy proceedings.
- l. During the period of probation, the defendant will keep the OSBMLS informed of his current address.
- m. During the period of probation, upon request, defendant will request all hospitals in which he anticipates practicing to furnish to the OSBMLS a written statement regarding monitoring of his practice while performing services in or to that hospital.
- n. During the period of probation, the defendant will not


supervise allied health professionals.

- o. During the period of probation, defendant will have the affirmative duty not to ingest any substance which will cause a bodily fluid sample to test positive for prohibitive substances.
- p. The defendant shall appear before the Board or a designated member thereof whenever requested to do so.
- q. During the period of probation, the defendant will submit to the investigation division of the OSBMLS any required reports and forms on a timely and prompt basis.
- r. Defendant will execute such releases of medical and psychiatric records during the entire term of probation as necessary for use by the compliance consultant to obtain copies of medical records and authorize the compliance consultant to discuss defendant's case with defendant's treating physicians and/or physicians holding defendant's records.
- s. Violation of any of the terms, conditions or requirements of probation shall be grounds for additional charges to be presented to the Board after notice to the defendant.
- t. The jurisdiction of the OSBMLS in this individual proceeding will continue until the terms, conditions and requirements of probation are modified or lifted by the Board on its own motion or upon the motion of the defendant.
- u. The defendant's reinstatement of his unrestricted license to practice medicine after the period of probation shall only take place and become effective after review by the Board and upon proof of compliance and satisfaction of all terms, conditions and requirements.

DATED this 5 day of February, 1998.

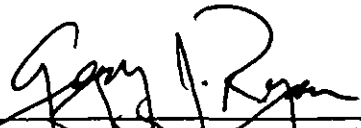


JOHN C. FUCCI, M.D.




GERALD C. ZUMWALT, M.D., Secretary
Oklahoma State Board of Medical
Licensure and Supervision

APPROVED AS TO FORM:



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ATTORNEY FOR DEFENDANT

CERTIFICATE OF SERVICE

This is to certify that on this 6 day of February, 1998 a true and correct copy of the above and foregoing Voluntary Submission to Jurisdiction and Order of Probation was mailed to:

MACK K. MARTIN
Suite 360
119 North Robinson Avenue
Oklahoma City, OK 73102

Janet Owens